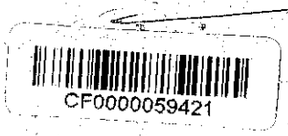
CrA 467/96

XII-189 / (Jail)
C. & P. R. 11/94/2,000



Division Bench (Criminal)

(2)

APPEAL OF PRISONER

No. 3442 Name ...

Father's name ...

Residence ... Age ...

Sentenced to ... On ...

Under section ... by ...

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ... 21.2.96

2 Date on which copy received ... 6.2.96

3 Date on which Appeal sent ... 26/2/96

4 Whether the prisoner wishes to be represented or ~~not~~ – Yes / No

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No. 3442 Name ...

Confined in ... Jail ...

No. 208 Law Dated 26/2/96 1996

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ ... togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent
Central Jail, Jabalpur. (M.P.)

Date of receipt in ... office ...

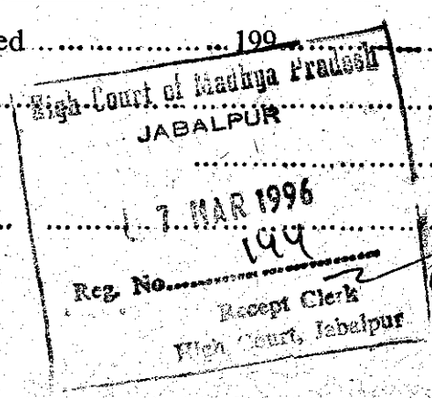
Date of receipt record to accompany the ...

Memo of Appeal to the Appellate court ...

No ... Dated ... 199

Forwarded to the ...

Date of receipt in Appellate Court ...



(P. T. O.)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cri.A.No.467/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B. : HON'BLE SHRI LAL CHAND BHADOO, J. AND HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J.

14-12-2005

Mr. Ravindra Agrawal, counsel for the appellant.
Mr. G.K.Beriwal, Deputy Advocate General for the respondent/State.

Heard.

ORAL JUDGMENT

1. By this appeal, through Superintendent, Central Jail, Raipur, the accused/appellant Itwari has questioned the legality of judgment of conviction and order of sentence dated 2-2-1996 passed by VIIth Additional Sessions Judge, Bilaspur in Sessions Trial No.217/95, whereby the learned Additional Sessions Judge, after holding the accused/appellant guilty for commission of the offence punishable under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life for committing murder of his wife Gitabai.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

Cri. A. No. 467/96

मामला क्रमांक ——2—— सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	2. The brief facts, necessary for disposal of this appeal, are that, Gitabai was married to the accused/appellant Itwari. ~~Before~~ 15 days prior to the date of the incident i.e. 7-2-1995, Gitabai and the accused/appellant quarreled. On account of that, the accused/appellant left the house and Gitabai started living with her mother Kamlabai. On the fateful day i.e. 7-2-1995, Kamlabai was returning along with Gitabai from Shanichari. The accused came from behind, stopped Gitabai and asked her to accompany him. When Gitabai refused to accompany the accused, he took out a knife from his attire and attacked her with the knife, as a result of which, blood started oozing out of the injuries and she fell down on the earth, and the accused ran away towards Shanichari, on which Kamlabai cried, hearing her cries, 2-3 ladies came to the scene of occurrence, and by that time, Gitabai succumbed to the injuries. Kamlabai lodged a report in Police Station Sarkanda, upon which F.I.R., Ex.P-10 was registered. The Station House Officer left for the scene of occurrence, after giving notice to the Panchas, prepared a Panchnama of the dead body	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

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मामला क्रमांक -3- सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

under Ex.P-19 and sent the body for post mortem examination to Dharam Hospital, Bilaspur, where the post mortem was conducted by P.W.-9, Dr. C.M.Tiwari. P.W.-9, Dr. C.M.Tiwari prepared a post mortem report, Ex.P-8 and he noticed 6 injuries on the body of Gitabai. Out of those, injuries No.1 to 3, which were incised wounds, were on heart, lung and stomach and even the lung was punctured. The weapon of the offence i.e. the knife was recovered under Ex.P-4. After completion of the investigation, a charge-sheet was filed against the accused/appellant for commission of the offence under Section 302 of the Indian Penal Code in the Court of Additional Chief Judicial Magistrate, Bilaspur, who, in turn, committed the case to the Sessions Judge, Bilaspur, wherefrom learned VIIth Additional Sessions Judge, Bilaspur received the case on transfer for trial.

3. The prosecution, in order to prove the charge, examined as many as 16 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Code of

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

Cri. A. No. 467/96

मामला क्रमांक —4— सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Criminal Procedure, in which he denied the prosecution evidence and said that he is innocent and he has been falsely implicated in the crime.

4. Learned Additional Sessions Judge, after hearing the arguments of learned counsel for both the parties, convicted and sentenced the accused/appellant as mentioned in para 1 of this judgment.

5. We have heard Mr. Ravindra Agrawal, learned counsel for the accused/appellant and Mr. G.K.Beriwal, Deputy Advocate General for the respondent/State.

6. The fact of homicidal nature of the death of Gitabai has not been disputed by learned counsel for the accused/appellant. Apart from that, from the evidence of eye-witness P.W.-10, Kamlabai, the mother of the deceased, the medical evidence of P.W.-9, Dr. C.M.Tiwari and from the post

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

Cri.A.No.467/96

मामला क्रमांक -5- सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

mortem report, Ex.P-8, it has been established that, the death of Gitabai was homicidal in nature.

7. So far as the question of involvement of the accused in crime in question is concerned, P.W.-10, Kamlabai, the mother of the deceased has stated that, at the time of the incident, she along with Gitabai were returning after doing their work and all of a sudden the accused/appellant came from behind and asked Gitabai to accompany him, on refusal by Gitabai, he took out a knife which he was carrying in his attire and attacked Gitabai on the vital organs i.e. chest and stomach, as a result of which, blood started oozing out of the injuries and Gitabai died spontaneously. Nothing has been brought in the cross-examination of this witness to falsify her evidence. Her presence with her daughter was natural. The ocular evidence of this witness also stands corroborated by the medical evidence. The post mortem report, Ex.P-8 has been proved by P.W.-9, Dr. C.M.Tiwari, who has stated that, there were 6 cut injuries on the body and injuries No.1 to 3,

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक -6- सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

which were on the heart, lung and stomach, were serious in nature. Therefore, from this evidence, the evidence of P.W.-10, Kamlabai that the accused stabbed the deceased with a knife stands corroborated. Therefore, in presence of the clinching legal evidence, we are of the considered opinion that, the involvement of the accused/appellant in crime in question stands established and the finding of the trial Court to this effect does not require any interference by this Court.

8. Learned counsel for the accused/appellant argued that the accused/appellant asked Gitabai to accompany him and when she refused to accompany him, that enraged the accused and in a heat of passion the accused stabbed Gitabai, therefore, the act of the accused comes within Exception 4 to Section 300 of the Indian Penal Code.

9. On the other hand, learned Deputy Advocate General for the respondent/State supported the judgment of the trial Court.

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मामला क्रमांक Cri. A. No. 467/96 — 7 — सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंन्तिम आदेश

10. The evidence of P.W.-10, Kamlabai shows that the accused quarreled with Gitabai and thereafter he himself left the house and thereafter Gitabai came to her house and started residing with her, and on the fateful day, Gitabai and Kamlabai were returning at the end of the day after doing their work, all of a sudden the accused came and asked Gitabai to accompany him, and on her refusal, he immediately started stabbing Gitabai. Considering the manner in which the accused started stabbing Gitabai without giving her any chance, we are of the opinion that, the act of the accused/appellant cannot be said to have come under the category of sudden quarrel or heat of passion and that too the accused stabbed Gitabai for 6 times and she was without any arm and except refusing to accompany the accused, there was no other act on behalf of Gitabai to enrage the accused. Therefore, we are not inclined to accept the arguments advanced by learned counsel for the accused/appellant. The act of the accused/appellant, as per the evidence that with a dangerous weapon like knife he attacked Gitabai on the vital organs, as a

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मामला क्रमांक —8— सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

result of which, heart and lung were punctured and as per the evidence of P.W.-9, Dr. C.M.Tiwari, the injuries No.1 to 3, which were on the heart, lung and stomach, were dangerous to life, indicates that, the accused attacked Gitabai with a deadly weapon on the vital parts to commit her murder. As such, the conviction of the accused/appellant for commission of the offence punishable under Section 302 of the Indian Penal Code does not require any interference by this Court. Therefore, we do not find any substance in this appeal.

11. In the result, the appeal, being devoid of merit, is dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
Vijay Kumar Shrivastava
Judge

G.Singh

28.1.06

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